IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5452 OF 2005

The State of Maharashtra .... Applicant
Vs.
Bramhlal Banaji Jat & Anr. .... Respondent

Mr. A.S. Shitole, APP for the Applicant.
Mrs. Varsha Palav for respondents.

CORAM : SMT. V.K. TAHILRAMANI,J.
DATE : 15TH FEBRUARY 2007

P.C.

1) Heard learned APP for the Applicant - State of Maharashtra and learned Advocate for the Respondents i.e. original accused Nos. 1 and 2. Perused the judgment and order as well as the evidence produced by the learned A.P.P.

2) Being aggrieved by the judgment and order dtd. 18/02/2005 in Sessions Case No. 118 of 2003 passed by the learned II Adhoc Additional Sessions Judge, Nashik, this application has been preferred by the State of Maharashtra. By the said judgment and order, the learned Sessions Judge acquitted the accused for the offences under Sections 4 & 5 of the Explosive Substances Act and under Sections 286, 336, 337 read with Section 34 of Indian Penal

Code.

3) It is the case of the prosecution that on 11/11/2002 at about noon the respondents i.e. original accused nos. 1 and 2 caused explosion of ammunition by means of detonator without any valid license. The said explosion was on account of sinking of well for the Maharashtra Jeevan Pradhikaran Project. In the said incident, P.W. 1 Jayant and P.W. 2 Sumati were injured.

4) The prosecution has examined two injured witnesses i.e. P.W. 1 Jayant, P.W. 2 Sumati and eye witness i.e. P.W. 3 Anant to prove the occurrence of the incident. All these witnesses have stated that they were unaware as to how the explosion had taken place and who is responsible for the explosion and what substance exactly was used for the explosion. In addition to these three witnesses, the prosecution has examined P.W. 4 Mr. Gholap to bring on record the responsibility to take precautions while sinking the well. Mr. Gholap has also stated he was unaware as to how the explosion had taken place and who is responsible for the explosion and what substance exactly was used for the explosion.

5) The prosecution has also examined P.W. 5 Prakash who is Sub contractor to establish responsibility of the accused persons to take precautions while sinking the well. From the evidence of P.W. 4, Mr. Gholap, the Engineer of Maharashtra Jeevan Pradhikaran,it has come on record that the work of contract of sinking the well was given to Mr. Mahajan. Mr. Mahajan inturn appointed P.W. 5 Prakash Adke as a sub contractor. The evidence of Mr. Gholap as well as Mr. Adke shows that precautions were indeed taken to avoid any injury to any person during the process of sinking of well. Mr. Adke has given details of precautions taken. Inter alia Mr. Adke has stated that board was affixed on the site of construction indicating that work of sinking of well is going on and thereby giving caution to the people visiting surrounding vicinity of the site. Mr. Adke has also deposed that the rope was fixed encircling the area of about 250 ft. of the site around where the well was to be sunk. He has also deposed that his employees and the accused persons used to caution people not to come near the place of sinking well by giving verbal instructions and blowing whistles. The above evidence of Mr. Prakash Adke and that of the other prosecution witnesses goes to show that indeed precaution was

taken to avoid any untoward incident.

6) It is true that P.W. 1 and P.W.2 were injured in the incident on account of stones being thrown out from the well when the explosion occurred. The injuries were minor injuries.

7) It is pertinent to note that no samples were seized from the place of the incident. No empties were seized to find out what sort of explosive was used. The instruments seized from the place of incident are not identified to be the articles which could be used or which were used for causing explosion. No samples of stones were seized which were said to have been thrown out because of the explosion. It is seen that no evidence was collected by the Investigating Officer to show that the explosion was the result of use of explosive substance. So also no explosive substance was seized at the instance of the accused by the Police. As nothing was seized, there was no report of Chemical Analyst. There is no evidence of an expert to show whether the nature, quantity and stock of the explosives used by the accused resulted in throwing out of debris out of the expected area.

8) The copies of the documents produced on record indicate that the accused were trained to handle explosives. The accused who caused the explosion were licensed to do the said act. In this situation, on the basis of the evidence on record, it is not possible to reach the conclusion that accused had not taken due care or caution at the time of causing explosion. The evidence adduced by the prosecution is not sufficient to come to the conclusion that the accused were in possession of explosives without any licence or that they caused explosion in contravention of the provisions of the Explosive Substances Act.

9) Looking to all these facts, I am of the opinion that the view taken by the learned Sessions Judge is a reasonable and possible view.

10) It is well settled that if the view of acquittal would have been reasonably arrived at, then the mere circumstance that the Appellate Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authority but to eschew, prolixity I am referring to only two of them i.e. A.I.R. 1971 S.C. 66 Khedu Mohton and others Vs. State of Bihar and C. Anthony Vs. K.G. Raghvan Nair

(2003) 1 SCC-1. In the case of C. Anthony, the Supreme Court has observed that unless findings of the Trial Court are perverse or contrary to the material on record, the High Court cannot in appeal substitute it's findings, merely because another contrary opinion was possible on the basis of material on record. As stated earlier, the view taken by the learned Sessions Judge is a reasonable and possible view, hence, no interference is called for.

11) Application is rejected.

(SMT. V.K. TAHILRAMANI, J.)